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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re T.B., a Person Coming Under the Juvenile  
Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

T.B.,

Defendant and Appellant.

F058311

(Super. Ct. No. JJD061217)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Tulare County. Hugo J. Loza,  
Judge.

Law Office of Erik R. Beauchamp and Erik R. Beauchamp, under appointment by  
the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Michael P. Farrell, Assistant Attorney  
General, Carlos A. Martinez and Christina Hitomi Simpson, Deputy Attorneys General,  
for Plaintiff and Respondent.

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\* Before Cornell, Acting P.J., Gomes, J., and Hill, J.

Appellant T.B., a minor, was initially adjudged a ward of the juvenile court and placed on probation in March 2008, following his admissions that he committed three misdemeanors: possession of a weapon on school grounds (Pen. Code, § 626.10, subd. (a))<sup>1</sup>, attempted vandalism (§§ 594, subd. (a), 664) and resisting, delaying or obstructing a peace officer (§ 148, subd. (a)(1)). He was continued as a ward of the court in October 2008, following his admission that he violated his probation by testing positive for THC, failing to meet the requirements of a substance abuse counseling program in which he was participating and failing to participate in anger management counseling.

In the instant case, in June 2009, following a contested jurisdiction hearing, the juvenile court found true allegations that appellant committed two misdemeanors: battery (§§ 242, 243, subd. (a)) and unauthorized entry into a noncommercial residential place (§ 602.5, subd. (a)). Following the disposition hearing, the juvenile court again continued appellant as a ward of the court; ordered that he reside in his parents' home under the supervision of the probation officer; and declared appellant's maximum term of physical confinement (MTPC) to be one year ten months.

On appeal, appellant contends the juvenile court erred in declaring, and therefore this court should strike, the MTPC. The People concede the point. We will strike the MTPC and otherwise affirm.

## **DISCUSSION**

Welfare and Institutions Code section 726 deals with "the maximum term of confinement in juvenile wardship cases generally." (*In re Sean W.* (2005) 127 Cal.App.4th 1177, 1187.) Subdivision (c) of Welfare and Institutions Code section 726 (section 726(c)) "requires the juvenile court to specify that the minor may not be confined for a period in excess of the maximum term of imprisonment which could be imposed on

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<sup>1</sup> Except as otherwise indicated, all statutory references are to the Penal Code.

an adult convicted of the offense that brought the minor under the jurisdiction of the juvenile court. By its express terms, however, section 726(c) applies only “[i]f the minor is removed from the physical custody of his or her parent or guardian ....” (*In re Ali A.* (2006) 139 Cal.App.4th 569, 573 (*Ali A.*)). Where, as here, a minor is not removed from the physical custody of his parents or guardian, section 726(c) “does not apply[,] ... the juvenile court [is] not required by [section 726(c)] to include a maximum term of confinement in its dispositional order” (*ibid.*), and the setting of an MTPC “is of no legal effect” (*id.* at p. 574). Accordingly, as the parties agree, the juvenile court erred when it set an MTPC of one year ten months for appellant. (*Ibid.*; *In re Matthew A.* (2008) 165 Cal.App.4th 537, 541 (*Matthew A.*)).

The parties also agree that the proper disposition is for this court to strike the MTPC. We agree. We recognize that in *Ali A.*, the court found the minor was not prejudiced when the juvenile court declared the MTPC and did not modify the disposition order. (*Ali A.*, *supra*, 139 Cal.App.4th at pp. 573-574.) However we agree with the following statement in *Matthew A.*: “Courts utilizing this technique [i.e., declaring an MTPC for minors adjudged wards of the court but not removed from the custody of their parent(s)] may have the best of reasons, such as ‘sending a message’ to the juvenile that the transgression was serious. But if the Legislature thought that this should be done, it would have been easy to write the statute to permit this practice. We think it should cease. The criticism of this practice in prior opinions without actually ordering a correction of the disposition seems to have had little effect. Thus, our order is to strike the specification of a term of imprisonment.” (*Matthew A.*, *supra*, 165 Cal.App.4th at p. 541.) In addition, we believe appellant is entitled to a dispositional order free of potentially confusing legally ineffective directives. Accordingly, we will strike the MTPC.

### **DISPOSITION**

The maximum period of physical confinement of one year ten months declared by the court is stricken. As modified, the judgment is affirmed.